

1 Paul A. Conant, 012667
2 **CONANT LAW FIRM, PLC**
3 2398 East Camelback Road #925
4 Phoenix, Arizona 85016-9002
5 Telephone: 602.508.9010
6 Facsimile: 602.508.9015
7 Email: docket@conantlawfirm.com
8 *Attorneys for Plaintiffs*

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Harvest Health & Recreation Inc., a British
12 Columbia, Canada corporation; Harvest
13 Enterprises, Inc., a Delaware corporation;
14 Harvest of California LLC, a California
15 limited liability company; Harvest
16 California Acquisition Corp., a Delaware
17 corporation;

18 **Plaintiffs,**

19 vs.

20 Falcon International, Corp, a Delaware
21 corporation; James Kunevicius, an
22 individual; Edlin Kim, an individual;
23 Falcon California, Inc., a Delaware
24 corporation; Falcon Brands, Inc. a
25 Delaware corporation; Coastal Harvest II,
26 LLC, a California limited liability
company; First Canyon Holdings, LLC, a
Delaware limited liability company; G1
Perez, LLC, a Delaware limited liability
company; V1 Perez, LLC, a Delaware
limited liability company; Industrial Court
L11, LLC, a Delaware limited liability
company; A1 Canyon, LLC, a Delaware
limited liability company; B1 Canyon,
LLC, a Delaware limited liability company;
C1 Canyon, LLC, a Delaware limited
liability company; D1 Canyon, LLC, a
Delaware limited liability company; E1

Case No.

COMPLAINT
(PETITION TO COMPEL
ARBITRATION UNDER FEDERAL
ARBITRATION ACT)

1 Canyon, LLC, a Delaware limited liability
2 company; Industrial Court L5, LLC, a
3 Delaware limited liability company;
4 Industrial Court L6, LLC, a Delaware
5 limited liability company; Kane Concepts,
6 LLC, a Delaware limited liability company;
7 MK Point, LLC, a Delaware limited
8 liability company; Cannoisseur Capital,
9 LLC, a Florida limited liability company;
10 BAM668, LLC, a California limited
11 liability company; Rhino Group, LLC, a
12 Delaware limited liability company; Grey
13 Ghost Services, LLC, a Delaware limited
14 liability company; Betterworld Ventures,
15 LLC, a California limited liability
16 company; Swoish Family Trust, an entity;
17 Albert Kim, an individual; John “Johnny”
18 Nasori, an individual; Noah Novello, an
19 individual; David Mitchell, an individual;
20 Brian Brown, an individual; Danielle
21 Brown, an individual,

22 Defendants.

23 **NATURE OF ACTION**

24 Pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (“FAA”), Plaintiffs seek an
25 order compelling Defendants to arbitrate all claims and issues set forth herein, including
26 termination and rescission of the Merger Agreement between Harvest and Defendant Falcon
on grounds including that, even though Harvest has fully performed all of its legal obligations
under the Merger Agreement as of this date, Falcon has been unable and unwilling to: (1)
produce auditable financial information or records concerning its business operations and
revenue despite repeated requests by Harvest for such records and an obligation by Falcon to
do so (as a publicly traded company Harvest cannot rely on the preliminary financial data
originally provided by Falcon which Harvest has been unable to receive Falcon’s cooperation

1 to substantiate); (2) rebut recently revealed evidence that it has transported marijuana across
2 state lines, and failed to disclose that to Harvest as required by due diligence obligations; (3)
3 rebut recently revealed evidence that it has failed to comply with California state law
4 concerning the regulation of the sale of marijuana, and failed to disclose that to Harvest as
5 required by its due diligence obligations. Falcon’s reckless business practices have also
6 threatened to put Harvest at risk of being named as a defendant, along with Falcon, in a
7 whistleblower lawsuit in California, if it were to proceed to closing the planned merger with
8 Falcon. As part of Harvest’s performance prior to the recent revelations and Falcon’s inability
9 or refusal to provide financial information to substantiate its activities, and Falcon’s failure
10 and refusal to disclose key details of its business practices, Harvest paid Falcon’s control
11 persons \$4,100,000.00 personally for assets they personally sold to Harvest separate from
12 Falcon, and further advanced over \$47,000,000.00 in cash and equipment (*e.g.*, processing,
13 manufacturing and packaging equipment and IT equipment) to Falcon. Despite Harvest
14 having paid over \$50,000,000.00 in cash and in-kind advances to Falcon and its principles,
15 they are unhappy with the deal they struck with Harvest, and have been attempting to
16 manufacture ways to avoid Falcon’s obligations under the Merger Agreement. Given what
17 Harvest now knows and believes about Falcon’s business practices, and given other conduct
18 by Falcon and its control persons described more fully below, and applicable law, Harvest is
19 entitled to terminate and rescind the Merger Agreement and seek and return and recovery of
20 all monies and things of value provided to Falcon and its control persons to date, in arbitration.
21 Because Falcon has been, on information and belief, harboring a dispute with Harvest of
22 which it failed to seek resolution under mandatory language of the Merger Agreement,
23 Harvest is entitled to seek an order compelling arbitration now.

24
25
26

1 This Complaint and Petition to Compel arbitration seeks to place all disputes herein
2 and between the parties into arbitration, pursuant to the Parties’ Agreement, where Harvest
3 will: (1) seek restitution damages and other relief for the return of all monies and consideration
4 provided to Falcon, and to put Harvest in the same financial position as it was *vis-à-vis* Falcon
5 *ante* the Parties’ Agreements; (2) seek appointment of a Receiver for all of Falcon’s business
6 and assets and to operate same in compliance with both state and federal law, pending
7 payment in full to Plaintiffs of the monies, damages and other relief to which they are entitles.

8 Plaintiffs Harvest Health & Recreation Inc., a British Columbia, Canada corporation,
9 (“Harvest”), Harvest Enterprises, Inc., a Delaware corporation (“Harvest Enterprises”),
10 Harvest of California LLC, a California limited liability company (“Harvest of California”),
11 Harvest California Acquisition Corp., a Delaware corporation (“Harvest Acquisition”) alleges
12 as follows:

13 **THE PARTIES**

14 1. Plaintiff Harvest Health & Recreation Inc. is a British Columbia, Canada
15 corporation in good standing, with its principal place of business in Tempe, Arizona, and is a
16 party to the transactions contemplated by the Merger Agreement alleged herein.

17 2. Plaintiff Harvest Enterprises, Inc. is a Delaware corporation in good standing
18 and a party to the transactions contemplated by the Merger Agreement alleged herein.

19 3. Plaintiff Harvest of California LLC is a California limited liability company in
20 good standing and a party to certain agreements as alleged herein.

21 4. Plaintiff Harvest California Acquisition Corp. is a Delaware corporation in good
22 standing, with its principal place of business in Tempe, Arizona.

23 5. Defendant Falcon International, Corp (“Falcon”) is a Delaware corporation in
24 good standing, with its principal place of business in California.

1 6. Defendant James Kunevicius is an individual and resident of California.

2 7. Defendant Edlin Kim is an individual and resident of California.

3 8. Defendant Falcon California, Inc. is a Delaware corporation in good standing,
4 with its principal place of business in California and is referred to herein, from time to time,
5 as a Note Debtor Defendant.

6 9. Defendant Falcon Brands, Inc. is a Delaware corporation in good standing with
7 its principal place of business in California and is referred to herein, from time to time, as a
8 Note Debtor Defendant

9 10. Defendant Coastal Harvest II, LLC is a California limited liability company in
10 good standing with its principal place of business in California and is referred to herein, from
11 time to time, as a Note Debtor Defendant.

12 11. Defendant First Canyon Holdings, LLC is a Delaware limited liability company
13 in good standing with its principal place of business in California and is referred to herein,
14 from time to time, as a Note Debtor Defendant.

15 12. Defendant V1 Perez, LLC is a Delaware limited liability company in good
16 standing with its principal place of business in California and is referred to herein, from time
17 to time, as a Note Debtor Defendant.

18 13. Defendant Industrial Court L11, LLC is a Delaware limited liability company
19 in good standing with its principal place of business in California and is referred to herein,
20 from time to time, as a Note Debtor Defendant.

21 14. Defendant A1 Canyon, LLC is a Delaware limited liability company in good
22 standing with its principal place of business in California and is referred to herein, from time
23 to time, as a Note Debtor Defendant.

24

25

26

1 23. Defendant MK Point, LLC is a Delaware limited liability company in good
2 standing, with its principal place of business in California. MK Point, LLC is owned and
3 controlled by Edlin Kim.

4 24. Defendant Cannoissuer Capital, LLC is a Florida limited liability company in
5 good standing, with its principal place of business in Miami, Florida.

6 25. Defendant BAM668, LLC is a California limited liability company in good
7 standing, with its principal place of business in Santa Ana, California.

8 26. Defendant Rhino Group, LLC is a Delaware limited liability company in good
9 standing, with its principal place of business in Delaware.

10 27. Defendant Grey Ghost Services, LLC is a Delaware limited liability company
11 in good standing, with its principal place of business in Anaheim, California.

12 28. Defendant Betterworld Ventures, LLC is a California limited liability company
13 in good standing, with its principal place of business in Temecula, California.

14 29. Defendant Swoish Family Trust is family trust with its principal place of
15 domicile and/or business in California.

16 30. Defendant Albert Kim is an individual whose domicile is in California and is a
17 stockholder of Falcon. Claims alleged against this Defendant are alleged against him
18 individually and in his capacity as a stockholder of Falcon.

19 31. Defendant John “Johnny” Nasori is an individual whose domicile is in
20 California and is a stockholder of Falcon. Claims alleged against this Defendant are alleged
21 against him individually and in his capacity as a stockholder of Falcon.

22 32. Defendant Noah Novello is an individual whose domicile is in California and is
23 a stockholder of Falcon. Claims alleged against this Defendant are alleged against him
24 individually and in his capacity as a stockholder of Falcon.

1 33. Defendant David Mitchell is an individual whose domicile is presently
2 unknown, but is believed to be California, and is a stockholder of Falcon. Claims alleged
3 against this Defendant are alleged against him individually and in his capacity as a stockholder
4 of Falcon.

5 34. Defendant Brian Brown is an individual whose domicile is presently unknown,
6 but is believed to be California, and is a stockholder of Falcon. Claims alleged against this
7 Defendant are alleged against him individually and in his capacity as a stockholder of Falcon.

8 35. Defendant Danielle Brown is an individual whose domicile is presently
9 unknown, but is believed to be in California and is a stockholder of Falcon. Claims alleged
10 against this Defendant are alleged against him individually and in his capacity as a stockholder
11 of Falcon.

12 **THE MERGER AGREEMENT and RELATED TRANSACTIONS**

13 36. A Merger Agreement dated February 14, 2019 was entered into by, between
14 and/or among Plaintiff Harvest and Harvest Acquisition and Falcon and certain other
15 Defendants as Shareholders of Falcon (the “Merger Agreement”).

16 37. Among other things, the Merger Agreement includes within it an arbitration
17 clause at Section 9.10, severable or separable from the Merger Agreement itself, in accord
18 with the “doctrine of separability” announced by the United States Supreme Court in *Prima*
19 *Paint Corporation v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967).

20 38. Under the “doctrine of separability”, a party seeking to rescind a contract
21 containing an arbitration clause does not, merely by seeking rescission or termination of that
22 main contract, also seek rescission or termination of the arbitration clause, which clause
23 remains in full force and effect even if the main contract is rescinded or terminated.

24
25
26

1 Industrial Court L10, LLC (“L10”) *via* their personally-owned membership interests in two
2 limited companies called Elemental Concepts, LLC, a North Carolina limited liability
3 company (owned by Defendant James Kunevicius) and Compass Point, LLC, a Delaware
4 limited liability company (owned by Defendant Edlin Kim). The purchase price for the sale
5 of L8 and L10 to Harvest of California was an aggregate of \$4,100,000.00, with 50% of that
6 purchase price to go to James Kunevicius and 50% to go to Edlin Kim, pursuant to an (a)
7 Assignment Agreement dated June 7, 2019 with no specified state or federal court venue, (b)
8 a Membership Interest Purchase Agreement dated as of June 7, 2019 (“MIPA”) with no
9 specified state or federal court venue; and, (c) an “Undertaking” dated June 7, 2019 with no
10 specified state or federal court venue. The MIPA specifies that disputes relating to the Control
11 Person Transaction are to be arbitrated with the American Arbitration Association.

12 45. All of the above-referenced agreements were negotiated in substantial part in
13 Arizona, and call for substantial performance in Arizona.

14 **JURISDICTION AND VENUE**

15 46. As permitted by 9 U.S.C. §4, because but for the arbitration agreement alleged
16 herein, diversity jurisdiction would be proper under 28 U.S.C. § 1332 since Plaintiff Harvest
17 is a citizen of a different jurisdiction than that of all Defendants and the amount in controversy
18 is substantially in excess of \$75,000, this United States District Court has jurisdiction to rule
19 on and determine Plaintiff Harvest’s Petition to Compel Arbitration.

20 47. Further, Section 9.11(b) of the Merger Agreement states that “any legal suit,
21 action or proceedings arising out of or based upon this Agreement, the other transaction
22 documents or contemplated transactions may be instituted in the federal courts of the United
23 States of America or the courts of the State of Delaware, in each case located in Maricopa

1 County, Arizona, and each party irrevocably submits to the personal jurisdiction of such
2 courts in any such suit, action or proceeding.”

3 48. Contractually, the venue for any disputes concerning any of the Promissory
4 Notes alleged herein above is within Maricopa County, Arizona, and such disputes are subject
5 to arbitration as well, pursuant to principles of contract and agency law.

6 49. Disputes arising under the Control Person Agreement are subject to arbitration
7 as well, as are the parties to the Control Person Agreement, under principles of contract and
8 agency law.

9 50. Venue is proper in the United States District Court for the District of Arizona
10 pursuant to 28 U.S.C. § 1391(b), Section 9.11(b) of the Merger Agreement, and 9 U.S.C. §4.

11 **GENERAL ALLEGATIONS**

12 **A. Invocation of the Federal Arbitration Act to Compel Arbitration.**

13 51. Defendants who or which are signatories are bound by Section 9.10 of the
14 Merger Agreement, which requires, at Section 9.10 (a), the following action: “If there is any
15 dispute or controversy relating to this Agreement or any of the Contemplated Transactions
16 (each, a “*Dispute*”), such Dispute shall be resolved in accordance with this Section 9.10
17 provided that any Disputes relating to any tax Return shall be resolved as set forth in Section
18 5.06(c).” No Dispute reference herein is subject to Section 5.06(c).

19 52. For some period of time greater than five days before October 30, 2019,
20 Defendants who or which are signatories to the Merger Agreement claimed a dispute or
21 controversy relating to the Merger Agreement, and or any of the Contemplated Transactions,
22 on information and belief.

23 53. During that time, Defendants who or which are signatories to the Merger
24 Agreement nonetheless failed, neglected or refused to arbitrate under a written agreement by
25

1 failing to issue a Notice of Dispute in accord with Section 9.10 of the Merger Agreement, and
2 by otherwise failing resolve the dispute or controversy in accord with Section 9.10 of the
3 Merger Agreement.

4 54. Plaintiff Harvest is aggrieved by such failure, neglect or refusal.

5 55. The FAA states, at 9 U.S.C. §4, as follows:

6 A party aggrieved by the alleged failure, neglect, or refusal of
7 another to arbitrate under a written agreement for arbitration may
8 petition any United States district court which, save for such
9 agreement, would have jurisdiction under title 28, in a civil action
10 or in admiralty of the subject matter of a suit arising out of the
11 controversy between the parties, for an order directing that such
12 arbitration proceed in the manner provided for in such agreement.
13 Five days' notice in writing of such application shall be served
14 upon the party in default. Service thereof shall be made in the
15 manner provided by the Federal Rules of Civil Procedure. The
16 court shall hear the parties, and upon being satisfied that the
17 making of the agreement for arbitration or the failure to comply
18 therewith is not in issue, the court shall make an order directing
19 the parties to proceed to arbitration in accordance with the terms
20 of the agreement. The hearing and proceedings, under such
21 agreement, shall be within the district in which the petition for an
22 order directing such arbitration is filed. If the making of the
23 arbitration agreement or the failure, neglect, or refusal to perform
24 the same be in issue, the court shall proceed summarily to the trial
25 thereof. If no jury trial be demanded by the party alleged to be in
26 default, or if the matter in dispute is within admiralty jurisdiction,
the court shall hear and determine such issue. Where such an issue
is raised, the party alleged to be in default may, except in cases of
admiralty, on or before the return day of the notice of application,
demand a jury trial of such issue, and upon such demand the court
shall make an order referring the issue or issues to a jury in the
manner provided by the Federal Rules of Civil Procedure, or may
specially call a jury for that purpose. If the jury find that no
agreement in writing for arbitration was made or that there is no
default in proceeding thereunder, the proceeding shall be
dismissed. If the jury find that an agreement for arbitration was
made in writing and that there is a default in proceeding
thereunder, the court shall make an order summarily directing the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

parties to proceed with the arbitration in accordance with the terms thereof.

56. Five days’ notice will be provided to Defendants in accord with 9 U.S.C. §4 and Section 9.10(b) of the Merger Agreement, this Complaint and Petition to Compel Arbitration is and shall also be Plaintiff Harvest’s five day Notice of Dispute thereunder, and the same shall be served in the manner provided in the Federal Rules of Civil Procedure. Plaintiff Harvest petitions and moves for an order compelling arbitration in accord with the foregoing cited arbitration clause and authorities. This is Harvest’s mandatory Notice of Dispute.

57. The arbitration clause in the Merger Agreement, as amended, states as follows at Section 9.10(c):

Any arbitration hereunder shall be conducted in accordance with the rules of the American Arbitration Association then in effect. The Company [Falcon] and the Parent [Harvest] shall each select one arbitrator, and the two arbitrators so selected shall select a third arbitrator, and the three arbitrators shall resolve the Dispute. The arbitrators will be instructed to prepare in writing as promptly as practicable, and provide to the Parent and the Company Stockholders, such arbitrators’ determination, including factual findings and the reasons on which the determination was based. The decision of the arbitrators will be final, binding and conclusive and will not be subject to review or appeal and may be enforced in any court having jurisdiction over the Parties. Each party shall initially pay its own costs, fees and expenses (including, without limitation, for counsel, expert and presentation of proof) in connection with any arbitration or other action or proceeding brought under this Section 9.10, and the fees of the arbitrators shall be share[d] equally, provided, however, that the arbitrators shall have the power to award costs and expenses in a different proportion.

58. Harvest Enterprises and the Note Debtor Defendants are subject to the arbitration clause in the Merger Agreement and Harvest Enterprises petitions and moves for

1 an order compelling arbitration of the disputes arising under the Promissory Notes, and in
2 connection with the Merger Agreement, as alleged herein.

3 59. Harvest of California is entitled to arbitration as against Defendants James
4 Kunevicius and Edlin Kim for the Control Person Transaction, and petitions and moves for
5 an order compelling arbitration of the disputes concerning the Control Person Transaction, as
6 alleged herein, including its exercise of the Purchaser Put Option as alleged herein below.

7 **B. Notice of Dispute Concerning Disputes Plaintiffs Seek to Have Compelled to**
8 **Arbitration if not Resolved Within Five Business Days.**

9 60. Like many other similarly-situated companies whose underlying operations
10 relate to the state-legalized sale of marijuana or cannabis, and occur in substantial part in the
11 United States, Harvest is a public company whose stock trades principally on the Canadian
12 Securities Exchange and the OTCQX tier of the U.S. OTC Markets.

13 61. The Merger Agreement states that the consideration to be paid is, *inter alia*,
14 \$155,000,000.00 in Multiple Voting Shares of stock of Plaintiff Harvest, which trades on,
15 *inter alia*, the Canadian Securities Exchange, with the number of Multiple Voting Shares to
16 be issued on the Closing Date to be determined by contractually agreed-upon formulae set
17 forth therein.

18 62. While the Merger Agreement was executed by the parties as of February 14,
19 2019, it was not structured to close until after the occurrence of numerous events and actions,
20 which might conceivably take many months, including potentially up to a year or more.

21 63. The Merger Agreement has not closed, to date.

22 64. So-called “Hart Scott Rodino”, or “HSR” review of potential merger
23 transactions by the United States Department of Justice is commonplace.

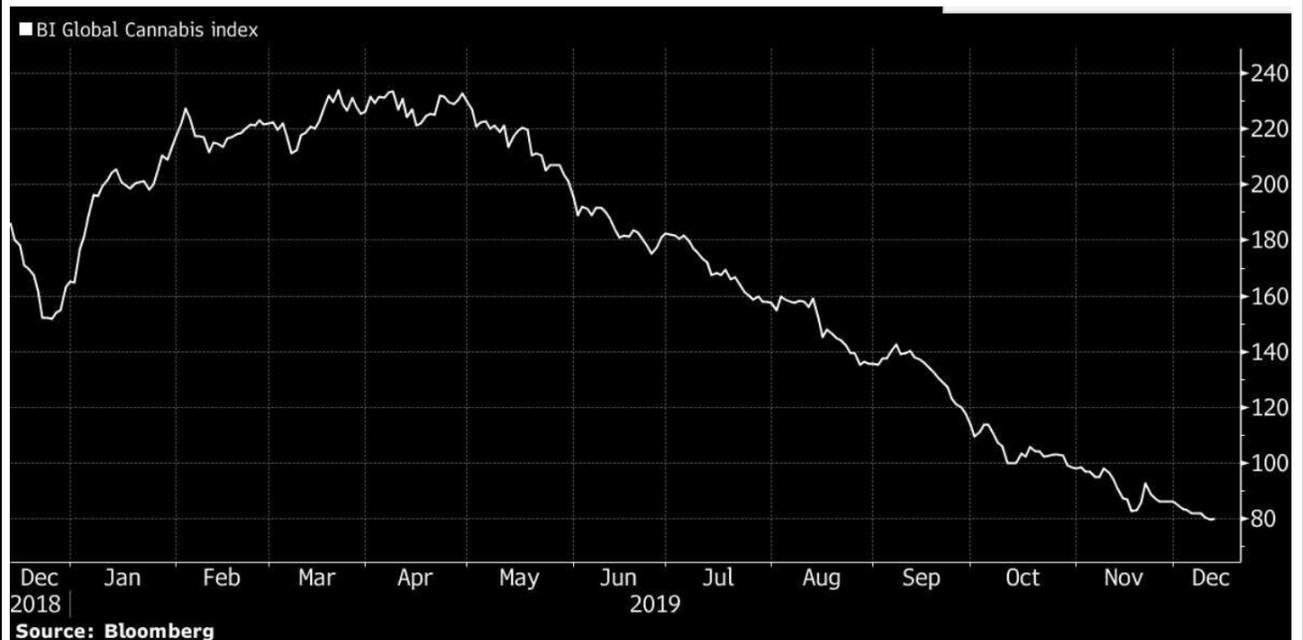
1 65. The Merger Agreement was subject to almost immediate HSR review, which
2 has the practical effect to barring a proposed merger from closing until after the government's
3 HSR review is completed.

4 66. But for the HSR review experienced in connection with the Merger Agreement,
5 it was Harvest's belief and expectation that the transactions contemplated by the Merger
6 Agreement would close quickly.

7 67. The initiation of HSR review by the government caused the closing not to occur
8 quickly.

9 68. After the Merger Agreement was executed as of February 14, 2019, and
10 beginning in about March and April 2019, the trading prices of publicly-traded stocks in the
11 marijuana company sector began to recede, as did Harvest's.

12 69. A general representation of the industry-wide trend in that regard is reflected in
13 the graphic below, generated by the *BI Global Cannabis Index* for the relevant market sector:



1 70. The Merger Agreement contained no provisions or language which would
2 allow Defendants to back out and not proceed to Closing just because of Harvest's stock price
3 changes, including of the type depicted in the graphic above.

4 71. Nonetheless, as publicly-traded marijuana company stock prices, and Harvest's,
5 began to recede in the general manner depicted in the trend shown in the graphic above,
6 Defendants began to engage in conduct which is now questioned in this Petition, Complaint,
7 and Notice of Dispute, as summarized herein below.

8 72. Initially, Defendants James Kunevicius and Edlin Kim reacted to the stock price
9 trend referenced above by seeking to renegotiate the Merger Agreement resulting in the June
10 7, 2019 Amendment.

11 73. The June 7, 2019 Amendment increased the stock consideration due under the
12 Merger Agreement to \$240,000,000.00.

13 74. Defendants James Kunevicius and Edlin Kim also negotiated the June 7, 2019
14 Control Person Transaction, providing for them to personally split a payment of \$4,100,000
15 without any apparent value or consideration to be realized by the non-controlling shareholders
16 of Falcon.

17 75. By June 7, 2019, the Merger Agreement, Amendment, Promissory Notes and
18 the Control Person Transaction (collectively, "the Parties' Agreements") together provided
19 for lucrative consideration to be paid to Defendants James Kunevicius and Edlin Kim and
20 entities they owned or controlled.

21 76. Pursuant to the Parties' Agreements, Plaintiffs collectively provided substantial
22 consideration to Defendants, which they received and kept, including in-kind consideration
23 and draw-downs on loans pending Closing, to be used for specific purposes prior to Closing
24 of the Merger Agreement as amended.

1 77. The Control Person Transaction actually closed, resulting in the payment to
2 James Kunevicius and Edlin Kim of \$4,100,000.00 in cash consideration.

3 78. While Defendants James Kunevicius and Edlin Kim required the execution of
4 documents reflecting the Control Person Transaction as an effective condition of the
5 Amendment, calling for Harvest of California to purchase their interests in two non-
6 operational limited liability companies with California marketplace processing licenses,
7 Plaintiffs now question whether Defendants James Kunevicius and Edlin Kim adequately
8 disclosed the terms of the Control Person Transaction to all other defendants, and may
9 investigate and take further action on that issue.

10 79. Harvest of California would not have entered into the Control Person
11 Transaction with Defendants James Kunevicius and Edlin Kim had it not believed that the
12 Merger Agreement would move forward to closing, and that Defendants James Kunevicius
13 and Edlin Kim were also committed to moving forward to closing, and would cause Falcon
14 to comply with its obligations under the Merger Agreement, as amended, and refrain from
15 withholding vital information which would give rise to a Material Adverse Effect (as that term
16 is defined in the Merger Agreement), and/or repudiating the Merger Agreement.

17 80. During a period of time in August and September 2019, when Harvest was
18 engaged in discussions with Falcon about Falcon attempting to rationalize its's use and timing
19 of the loan proceeds, its business operations, and reasonable efforts to fulfill its obligations
20 set forth in the Merger Agreement prior to Closing, Falcon instructed its lawyer named Sander
21 Zagzebski to issue a "Notice of Breach and Pending Parent Default" dated September 5, 2019
22 (the "Zagzebski letter") stating, *inter alia*, that Falcon wanted certain monies from Harvest,
23 and that if it did not comply, Harvest would be in default under the Merger Agreement.

1 81. By that time, Harvest had already advanced loans to Falcon in the total amount
2 of \$47,852,881.12 as required under the terms of the 2/14 Note, the 2/15 Note and the 6/7
3 Note and, while the advances under the 6/7 Note were not funded on the exact schedule Falcon
4 specified in the Zagzebski letter, Falcon received and accepted all loan advances, and did not
5 return any of those monies or, for that matter, any of the consideration provided to it by
6 Harvest or any of the Plaintiffs, or any of the consideration provided by any of the Plaintiffs
7 to or for the benefit of any of the Defendants.

8 82. Knowing of Harvest's view that it was not in default or breach under the Merger
9 Agreement, Falcon also did not provide Harvest with any required Notice of Dispute
10 concerning either the matter of the monies addressed in the Zagzebski letter, any action it was
11 considering or might consider in follow up to the Zagzebski letter, or any issue of any type
12 under the Merger Agreement, as amended.

13 83. After Falcon received all of the monies referenced above, Falcon appeared to
14 be working forward with Harvest to a Closing of the Merger Agreement, as amended.

15 84. On September 24, 2019, Harvest and Falcon both certified "substantial
16 compliance" with a common legal requirement relating to federal antitrust law jurisprudence
17 under HSR rules, a so-called "Request for Additional Information and Documentary Materials
18 issued by the United States Department of Justice" regarding Harvest's proposed acquisition
19 of Falcon by merger.

20 85. As announced, the certification of substantial compliance commenced a 30 day
21 waiting period, after which the HSR-related delay which had been in effect since at or about
22 the time of the announcement of the Merger Agreement, Harvest and Falcon would be free to
23 close their planned merger transaction, meaning that the Closing could occur on or after
24

1 October 23, 2019 unless the United States Department of Justice raised federal antitrust law
2 concerns under HSR rules in a specific manner.

3 86. Harvest did not expect the United States Department of Justice to raise any HSR
4 concerns after expiration of the waiting period nor, on information and belief, did Falcon.

5 87. While Falcon appeared to continue to work with Harvest toward Closing after
6 the HSR substantial compliance certification was completed and the 30 day waiting period
7 began, Falcon had ignored providing financial information to Harvest which it had been
8 requesting regularly for a number of weeks, and which was necessary for Closing.

9 88. As more time passed and October 23, 2019 approached with no responses from
10 Falcon to its requests for financial information, Harvest wrote to Falcon on October 16, 2019,
11 at its official address for receipt of notices under the Merger Agreement.

12 89. The October 16, 2019 letter stated “we are a short way from completing the
13 merger and are committed to working with your finance and operational teams to complete
14 the needed financial information and request for information outlined in this letter”, and
15 further expressed concerns about the status of Falcon’s books and records, its financial
16 disclosures and about early, emerging information about Falcon being presented by a
17 whistleblower that appeared potentially troubling.

18 90. Rather than responding substantively to Harvest’s October 16, 2019 letter,
19 Falcon instead negotiated for a “standstill agreement” with Harvest, which was ultimately
20 signed as of October 30, 2019 (“Standstill Agreement”).

21 91. Effects of the October 30, 2019 Standstill Agreement included that, during the
22 30 day “standstill period”:

23 a. Harvest was prevented from declaring Falcon to be in breach or default;
24
25
26

- 1 b. Falcon would not have to respond to Harvest’s October 16, 2019 letter
2 seeking financial information and more details about the potential
3 whistleblower’s evidence; and,
4 c. Falcon could -- without disclosing to Harvest the financial information it
5 had requested in the October 16, 2019 letter -- seek debt financing from
6 some other source, besides Harvest.

7 92. Nothing in the Standstill Agreement provided for progress towards a Closing to
8 be halted.

9 93. Into November 2019, Harvest officials continued to request financial and other
10 information from Falcon as contemplated under the Merger Agreement and important for the
11 Closing.

12 94. Falcon provided none of the financial or other information important for
13 Closing that Harvest requested from it in September, October and November 2019.

14 95. As the Standstill Agreement was scheduled to end, Falcon instead negotiated an
15 extension of the Standstill Agreement to January 5, 2020, to which Harvest agreed.

16 96. During the standstill period, as extended, Harvest representatives have met for
17 business meetings with Falcon personnel at a marijuana business convention to discuss the
18 status of the Merger Agreement.

19 97. The business meetings at the convention were non-productive, with one Falcon
20 representative (Edlin Kim) appearing at the meeting with visibly large amounts of cash in his
21 front pocket and back pocket and in a bag, and wearing what appeared to be many tens of
22 thousands of dollars in men’s jewelry made of gold, and with both Falcon representatives
23 (Edlin Kim and James Kunevicius) expressing no interest in doing any work to move the
24 planned transaction with Harvest forward and, instead, stating openly that Falcon would not

25
26

1 close the Merger Agreement, as amended, due exclusively to the decline in Harvest's stock
2 price.

3 98. Also during the standstill period, as extended, Harvest has additionally learned
4 more information about Falcon which has led it to reasonably believe that Falcon cannot close
5 the transactions contemplated by the Merger Agreement, as amended, without breaching its
6 terms because Harvest is informed and believes that:

- 7 a. Falcon has misrepresented to Harvest that it had no undisclosed liabilities;
- 8 b. Falcon has misrepresented to Harvest that it had complied and was
9 complying with all Laws applicable to its business other than any
10 noncompliance which would not result in a Material Adverse Effect (as
11 those capitalized terms are defined under the Merger Agreement, as
12 amended);
- 13 c. Falcon misrepresented to Harvest that it had not made any untrue statement
14 of material fact in Merger Agreement representations and warranties or
15 statements in Disclosure Schedules; and,
- 16 d. Falcon misrepresented to Harvest that its Interim Balance Sheet fairly
17 presented its financial condition within applicable accounting categories
18 within 5% margins.

19 99. Harvest is informed and believes that the above-referenced misrepresentations
20 constitute false representations of fact, were known to be false or were made with reckless
21 indifference to the truth, were made to induce Harvest to act or refrain from acting, Harvest's
22 action or inaction was taken in justifiable reliance upon the misrepresentations, and Harvest
23 has suffered damage as a result of its reliance.

1 100. Specifically, evidence exists that Falcon was knowingly engaged in a pattern of
2 ongoing violations of law and regulations governing its conduct as a marijuana/cannabis
3 business, on information and belief, including (a) providing marijuana/cannabis in violation
4 of California Bureau of Cannabis Control (“CBCC”) regulations and (b) interstate
5 transportation of marijuana/cannabis before the Merger Agreement was executed, and (c) that
6 it engaged in ongoing CBCC regulation violations after the Merger Agreement was executed.

7 101. Falcon’s transportation of marijuana/cannabis across state lines as alleged
8 above constitutes a Material Adverse Effect, an undisclosed liability, and renders material
9 statements of fact made by Falcon in the Merger Agreement untrue.

10 102. Falcon’s prior and ongoing violations of CBCC regulations as alleged above
11 constitute a Material Adverse Effect, an undisclosed liability, and renders material statements
12 of fact made by Falcon in the Merger Agreement untrue.

13 103. Further, evidence exists that Falcon’s Interim Balance Sheet, on information
14 and belief, did not fairly present its financial condition within applicable accounting
15 categories within 5% margins, including that Falcon has remained unable or unwilling to
16 provide documentation indicating that its books and records have been properly maintained,
17 despite previous and repeated written requests by Harvest for such information.

18 104. In addition, Harvest believes that Falcon erroneously harbors a contention that
19 it is not estopped from asserting, or barred by laches from asserting, the purported validity of
20 the Zagzebski letter as a basis for claiming to terminate the Merger Agreement, as amended,
21 and seek to keep for itself, and not repay, the consideration which all Defendants have
22 received to date from Plaintiffs, or any of them.

23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Defendants James Kunevicius and Edlin Kim repay to Harvest of California all of the consideration paid in connection with that transaction, with this constituting the notice of exercise of the “Purchaser Put Option” provided for therein, given that, on information and belief, Defendants James Kunevicius and Edlin Kim contend that they are entitled to keep the \$4,100,000 that they were paid, and will decline to repay it;

- e. For a declaration that, to the extent Falcon seeks to rely to the Zagzebski letter as support for any claim of right, that it is estopped from doing so and/or barred by laches from doing so;
- f. Pursuant to AAA Rule 34, Interim Measures, for the protection and conservation of Harvest’s monies and property which are supposed to still be in the possession, custody and/or control of Falcon and/or one or more of the other defendants, and/or the proceeds thereof, including appointment of an equity receiver *pendente lite* on grounds of waste, fraud, abuse, illegal conduct, to take charge of Defendants’ business, to report to the AAA arbitration panel as to its status, and to take any and all reasonable measures, to be more fully specified in a proposed Receivership Order, to protect Plaintiff’s expectancies of recovery; and,
- g. For an award of attorneys’ fees, forum fees, costs and expenses incurred by Plaintiffs, or any of them, in connection with this matter.

WHEREFORE, Plaintiffs respectfully requests that this Court grant the following relief:

- A. Make an order, pursuant to 9 U.S.C. §4, and the arbitration clauses quoted above, as well as alternatively the doctrines of agency, equitable estoppel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

and/or third party beneficiary law, or other applicable law, compelling all Defendants to arbitrate the claims summarized above in this Petition and Notice of Dispute, before the American Arbitration Association; and,
B. Make such other orders and rulings in furtherance and aid of the order compelling arbitration requested herein above.

Respectfully submitted this 6th day of January, 2020.

By: /s/ Paul A. Conant
Paul A. Conant, 012667
CONANT LAW FIRM, PLC
2398 East Camelback Road #925
Phoenix, Arizona 85016-9002
Telephone: 602.508.9010
Facsimile: 602.508.9015
Email: docket@conantlawfirm.com

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Harvest Health & Recreation Inc. ; Harvest Enterprises, Inc. ; Harvest of California LLC ; Harvest California Acquisition Corp.

Defendant(s): Falcon International, Corp ; James Kunevicius ; Edlin Kim ; Falcon California, Inc. ; Falcon Brands, Inc ; Coastal Harvest II, LLC ; First Canyon Holdings, LLC ; G1 Perez, LLC ; V1 Perez, LLC ; Industrial Court L11, LLC ; A1 Canyon, LLC ; B1 Canyon, LLC ; C1 Canyon, LLC ; D1 Canyon, LLC ; E1 Canyon, LLC ; Industrial Court L5, LLC ; Industrial Court L6, LLC ; Kane Concepts, LLC ; MK Point, LLC ; Cannoisseur Capital, LLC ; BAM668, LLC ; Rhino Group, LLC ; Grey Ghost Services, LLC ; Betterworld Ventures, LLC ; Swoish Family Trust ; Albert Kim ; John "Johnny" Nasori ; Noah Novello ; David Mitchell ; Brian Brown ; Danielle Brown

County of Residence: Maricopa

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Paul A Conant , Attorney
Conant Law Firm
2398 E. Camelback Rd, Suite 925
Phoenix, Arizona 85016
6025089010**

II. Basis of Jurisdiction:

4. Diversity (complete item III)

III. Citizenship of Principal Parties

(Diversity Cases Only)

Plaintiff:- **1 Citizen of This State**

Defendant:- **5 Non AZ corp and Principal place of Business outside AZ**

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

896 Arbitration

VII. Requested in Complaint

Class Action: **No**

Dollar Demand: **Order to compel arbitration**

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: Paul A. Conant

Date: 1/6/2020

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.